RULES
AND
ORDERS
For the Court of
COMMON-PLEAS
At VVESTMINSTER,

Made and publiſhed by the Judges of the ſaid Court, in the Term of S. *Michael*, in the year One thouſand ſix hundred fifty four.

LONDON.
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RULES and ORDERS FOR THE *Common Bench*, Of the Term of S. *Michael*, In the year, 1654.

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1. FOr the reducing of *Attornies, and Officers, to their due attendance.*

2. *For the reformation of abuses of Sheriffs, and Bailiffs.*

3. *For discovery, and punishment of abuses in generall.*

4. *For the constant preservation of* Order *in the Court.*

5. *For settling a constant course of practice, pleadings & proceedings, especially where there hath been variety of opinion, or practice.*

Concerning Attornies and Officers.

THat all Officers, and Attornies of the Court, be admitted of some Innes of Court, or Chancery, by the beginning of *Hillarie* Term next, or in the

the ſame Term wherein they are admitted Officers or Attornies; and be in Commons one week in every Term, and take Chambers there, or in caſe that cannot be conveniently, yet to take chambers, or dwellings in ſome convenient place, and leave notice with the Butler where their chambers or habitations are; under pain of being put out of the Roll of Attornies.

2. That all Officers, and Attornies of this Court, appeare in perſon in this Court, upon, or before the fourteenth day of *Michaelmas* Terme, and upon or before the ſeventh day of every other Term, upon pain of ten ſhillings for the firſt default, twenty ſhillings for the ſecond default, and putting out of the Roll for the third default. The apparance to be entred with the Clerke of the Warrants, and the defaulters to be delivered to the Court upon oath (if required) within three daies after the time required for apparance.

3. That every Sheriffe have his Deputy in Court to returne and receive Writs, and that each Deputy yearly before *Hillarie* Terme have his name and

the place of his residence in *London* or *Westminster*, set and continued up in Tables in the Office of Clerk of the Warrants.

4. That the Clerks of Assize, their Deputies, or Assistants, do personally appear with their *Postea's* on the first day of *Easter*, and *Michaelmas* Term; and the Deputy Sheriffs, and all other Officers of the Court doe personally appear by the Essoyn day of every second return of every Term; And continue there during the residue of the Term without some just cause to the contrary allowed by the Court.

5. That for the future, Common Solicitors be not admitted to practice in this Court unlesse they are admitted Attornies of either Bench; provided that it extend not to the managing of evidence at a Tryal, nor to Private Sollicitors, or servants of Corporations, or other persons in the cases of their Masters.

6. That none be admitted an Attorny of this Court for the time to come, unlesse he hath practised as a Common Solicitor in this Court by the space of five years now last past; or hath served, or

shall have served by the space of five years as a Clerk to some Judge, Sergeant at Law, practising Councellor, Attorny, Clerk or Officer of one of the Courts at *Westminster*, unlesse his Master die or give over his practice, and be also upon examination found of good ability and honesty for such employment; and that sufficient proof (to be put into writing) be made of such service to the Prothonotary upon a desire of Admittance, and filed with the Clerk of the Warrants without Fee.

7. That no person practise in anothers name, nor that any Attorny knowingly permit another to practise in his name, upon pain of being put out of the Roll, excepting in warrants of Attorny for common recoveries.

8. That Attornies dismissed by one Court from their practice for misdemeanour, be not (after certificate) admitted to practise in another Court, It being contrary to the intent of the Law.

9. That no under Sheriff or Bayliff of Sheriffs or Liberties be admitted during such their employment to practise as Attornies, under pain of expulsion

from the employment of an Attorney, and not be readmitted.

10. That such Attorneys as have not been attending their imployment in this Court by the space of one year last past, unlesse hindred by sickneſſe, be not allowed their priviledge of Attorneys.

11. That for the prevention of maintenance and brocage, no Attorney be Lessee in an Ejectment, nor Bayle for a Defendant in this Court in any Action.

Concerning Sheriffs and Bayliffs.

THat for the prevention and remedy of delaies and abuſes in Sheriffs, under Sheriffs, Bayliffs of liberties and their Deputies, and other Bayliffs of Sheriffs, &c. in execution of Princeſſe and Writs, if it ſhall appear that any

any ſuch Officer ſhall wilfully delay the execution or return of any Proceſſe or Execution, or ſhall take or require any undue Fees for the ſame, or ſhall give notice to the Defendant, thereby to fruſtrate the Execution of any Proceſſe or Writ, or having leavied money, ſhall detain it in their hands after the time of the return of their Writs, beſides the ordinary courſe of Amerciaments (the contempt or miſdemeanour appearing) an Attachment, Information, Commitment, or Fine to be, as the Caſe requireth. And this as well in the Caſe of a late Sheriffe, or perſon before mentioned, as of them at preſent in Office.

And whereas Sheriffs have taken immoderate and exceſſive Fees for Execution of Writs of Poſſeſſion, or reſtitution of poſſeſſion, contrary to Law; It is declared that ſuch immoderate Fees ought not to be taken; and in caſe ſuch ſhall be taken, the Court to proceed to puniſh the ſame according to Law, upon complaint thereof made.

That to reform abuſes by blank Warrants granted by Sheriffs, whereby perſons are arreſted, and driven to extorted Compoſitions for their liberties without proceſſe of Law; that no Warrants be granted out to any Officer to arreſt or attach any perſon before a Writ firſt come to the Sheriff.

Concerning the Reformation and puniſhment of abuſes in generall.

ORdered, That a Jury of able and credible Officers, Clerks, and Attorneys, once in three years be impannelled, and ſworn to enquire,

1. Of the points uſually inquirable by the Writ, *viz.* falſities, contempts, miſpriſions and offences.

2. Of ſuch who have been admitted Attornies

Attornies or Clerks, and are notoriously unfit, their names to be presented to the Court, and they to be punished or removed, as the case shall require.

Of new or exacted Fees, and of those that have taken them, under whatsoever pretence, and to prepare and present a Table of the due and just *Fees*, that the same may be fixed and continue in every Office; and likewise for the *Fleet*.

And that some persons be Injoyned and sworn to give evidence, *viz.* some Clerks of the Court, and some Attornies in every County, not excluding others.

Concern-

Concerning the better preſervation of Order among the Officers and Clerks, and obſervation of breach of Orders and Miſdemeanours.

THat the Court doe once every year in *Michaelmas* Term nominate twelve or more able and credible practiſers in the Court to continue for the year enſuing, for theſe purpoſes hereafter limited.

That they or any ſix of them Examine ſuch perſons as ſhall deſire to be admitted Attorneys, and appoint convenient times and places for the ſame: and in order thereunto, that ſuch perſons as ſhall deſire to be admitted Attorneys, firſt

firſt attend the Prothonotary with his proof of ſervice, then to repair to the perſons appointed to examine Attornies, and being approved, to be preſented to the Court with the aſſignation of his approbation, and then to be ſworn in open Court, unleſſe ſome juſt exception be againſt him.

That they give information to the Court from time to time, of Breaches of Orders, and miſcarriages of Officers, Attorneys, and Clerks.

That a ſetled courſe of practiſe and proceedings be ſettled, eſpecially in thoſe Caſes where there hath

been uncertainty, and that the inconveniences in proceſſe, proceedings, and pleadings may be regulated unto a due courſe. In Order whereunto theſe ſeverall things are Ordered and directed according to the method of Proceedings.

I. *Concerning the Entring of Records and the perſons by whom.*

THat no Rolls be delivered to be entred, but onely to Clerks, or ſuch Attorneys as have entred for the ſpace of four years laſt paſt, for themſelves.

That a Table be ſet up of the Names of the Officers and Clerks that are to be admitted unto the Rolls in the Treaſury: and that ſuch and no others be admitted thereunto, and that they may reſort there as well for their Occaſions, as for their Learning and Inſtruction, during the Term, and alſo twice in every week from a month after the Term, and that every ſuch Clerk duly attend as well the Prothonotaries Office in the Term time as for the Entring of Judgments upon Summons given by the Prothonotarie reſpectively.

For the prevention of the undue iſſuing of Judiciall Writs, and falſifying of Records. It is Ordered,

THat all Executions, and all other Writs iſſuing out of the Prothonota-

ries Offices be duly ſigned by the reſpective Prothonotaries before the ſame be ſealed, and that no Exemplificaton of any common Recovery or other Record which ought to be examined and ſigned by the Prothonotary, be ſealed before the ſame have been ſigned by the Prothonotary. Nor that any exemplification (excepting exemplifications of Fines and common Recoveries of the preſent or next precedent Term) be ſealed before they be firſt ſigned and examined by the Clerk of the Treaſury.

And becauſe the intermedling and dealing of Clerks in more than one Prothonotaries Office at one time, hath been an occaſion of diſorder and uncertainty in proceedings: It is likewiſe Ordered, that every Prothonotaries Clerk doe apply himſelf from henceforth to one Prothonotaries Office onely, and doe give his attendance and make his Entries in that Prothonotaries Office.

2. Con-

2. *Concerning Rolls and Records, and their Entries and Bringing in.*

THat the whole proceedings of any Cauſe after Apparance be caried on in the Office of that Prothonotary where it was firſt entred, or declaration delivered.

That no Rolls be carried into the Countrey, under pain that the Offender be excluded from Entring any more Rolls afterwards as a Clerk.

That the Common Rolls of every Term, except *Eaſter*, be brought in to the Prothonotary fairly entred, and docketted at leaſt ten daies before the Eſſoine day of the ſucceeding Term, under pain of ten ſhillings for every Roll wanting.

And that no Rolls be delivered to ſuch perſon after any ſuch offence the ſe-

cond time, without ſpeciall Order.

That the reſpective Prothonotaries before the third day of the then next Term, doe give in the Names of the Defaulters and Defaults unto the Court in writing.

That the Rolls brought into the Prothonotary be delivered over to the Clerk of the Warrants the day before the Eſſoine day of the enſuing Term, together with a Note of the Rolls that are wanting, the ſame Note to bee ſubſcribed by the Clerk of the Warrants, and redelivered to the Prothonotary.

That the Clerk of the Warrants within five dayes after Receipt of the Rolls from the Prothonotary, do deliver over the Common Rolls to the Clerk of the Eſſoines, taking the like Note from the Clerk of the Eſſoines of the Rolls wanting.

That the Clerk of the Eſſoines binde up the Rolls; *viz:* the firſt part before the appearance day of the ſecond Return, the ſecond part before the Eſſoine day of the third Return, the third part before the Eſſoine day of the next Term.

That

That the Rolls of *Easter* Terme be brought to the Prothonotary on or before the first day of *Trinity* Terme, Delivered to the Clerk of the Warrants within six daies, to the Clerk of the Essoins within five daies after, to be bound up before the Essoine day of *Michaelmas* Terme, each party subscribing the like Notes, and the penalties the same as before.

Concerning Originall Suits and processe, where laid.

THat Actions upon the case, trespasse, for goods, assault or Imprisonment arising in any English County, be laid in their

their proper Counties, unleſſe they ariſe where Juſtices of *Niſi prius* ſeldome come. And becauſe treſpaſſe or trover for goods, Battery, Impriſonment, and ſlander muſt needs be notorious in what County they ariſe; the Attorny knowingly laying them out of the proper County (unleſſe in the Caſes before expreſſed, or for ſuch other Cauſes as ſhall be allowed by a Judge of the Court, and duly made appear to be true) be ſeverely puniſhed.

That although the Declaration be delivered ſeven days before the laſt day of the next precedent Term, or after, yet before plea upon Oath made, the Viſne may be changed upon motion, in the ſaid tranſitory actions, the next Term after: And the Defendant to plead to the new Action as he ſhould have done in the other, without delay.

That the Viſne may be changed, (upon Oath) as before, though the Defendant come in by Exigent.

Con-

Concerning Proceſſe, and ſerving thereof.

THat according to the proviſion of the Statute of the one and thirtieth year of Queen *Elizabeth*, All Attorneys that ſue out proceſſe of Exigent, be carefull that Writs of Proclamation be delivered, and the Sheriffe doe take care duly to execute the ſame.

That according to the Statute of the twenty third year of *Henry* the ſixth, a priſoner taken upon a *Capias* in proceſſe, be not diſcharged till he hath given bond to appear, unleſſe the Plaintiffe or his Attorney ſhall conſent to take an apparance without Baile. And in ſuch caſe the warrant of Attorney to appear, to be ſubſcribed or accepted by the Defendants Attorney, and ſuch Warrant not to be revoked, and an Attachment to be

granted againſt the Bayliffe offending herein, or againſt the Attorney refuſing to appear or procure an apparance, having ſo Subſcribed or Accepted.

And forasmuch as divers Sheriffs, Bailiffs of Liberties, and their Bailiffs reſpectively have of late time contrary to Law, and againſt former Orders of this Court, diſcharged perſons taken upon Outlaries without *ſuperſedeas*; It is hereby Declared, that ſuch dealing is an abuſe; and that all ſuch who have or ſhall diſcharge ſuch perſons without *Superſedeas*, ſhall be ſeverely puniſhed. And that no Sheriffe, under-Sheriffe, their Deputies or Bailiffs, may from henceforth diſcharge or ſet at Liberty any perſon or perſons arreſted upon any *Capias utlagat'* untill he receive a *Superſedeas* according to Law from the Officer or Officers thereunto appointed.

Con-

Concerning a Habeas Corpus *to Sheriffs and Gaolers.*

THat a *Habeas Corpus cum Cauſa ad faciendum & recipiendum*, directed to any Sheriffe (other than *London* and *Middleſex*) not to be returnable *immediatè*, or in the vacation time, but at a day certaine in Court in the Term.

That ſuch *Habeas Corpus* to the Sheriffe of *London* or *Middleſex* may be granted in Terme or vacation time returnable *Immediatè*.

That in caſe of *Habeas Corpus*, returnable *immediatè*, the Sheriffe ought to make his return the ſame day that the Writ is delivered, and to bring the Body immediately as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corpus* is directed to a Sheriffe, Warden of the Fleet, Marſhall or Goaler, the priſoner is to be brought in cuſtody according to the Writ at the day limited, without being permitted to wander abroad in the mean time, upon pretence of ſuch Writ.

That a *Habeas Corpus ad reſpondendum* may be granted to the Warden of the Fleet, or to the Keeper of an inferiour priſon of a Liberty or Franchize, where a *Capias* is returned in Court, *Non eſt inventus*; ſuch Writ to recite ſhortly the *Capias*, and to be returnable at a day certain in Court, and to be a good cauſe of *Deteiner*, as well as where a *Capias ad reſpondendum* comes to a Sheriffe.

That a *Habeas Corpus ad ſatisfaciendum* may be granted to the Warden of the Fleet, or to ſuch inferiour Goaler returnable in Court at a day certain, and the Number Roll of the Judgment to be endorſed upon the Writ by the Attorny who ſues it out; and ſuch Writs to be a Cauſe of deteiner.

That if upon a *Habeas Corpus* the priſoner be returned charged with proceſſe out of the upper Bench or Exchequer, and

and out of the Common Pleas, the Priſoner may be committed with thoſe Cauſes.

That if upon a *Habeas Corpus cum Cauſa* the priſoner be returned charged with a proceſſe out of the Common Bench, though returnable at a day to come, the Priſoner may be committed with his Cauſe.

That if upon a *Habeas Corpus*, or *Cepi Corpus*, the party be returned in cuſtody and Bailable, and ſpecial Bail requirable, the Baile not to be taken abſolutely without conſent of the plaintiffe or his Attorney, and if taken *de bene eſſe*, the priſoner not to be diſcharged till the Baile be aſſented unto, or the plaintiff over-ruled in Court to accept the ſame upon Examination.

That upon every Commitment by a Judge out of Court, the proſecutor of the *Habeas Corpus* is to have one of the Prothonotaries Clerks preſent at the turning over of the priſoner, that the Commitment may be duly entred and filed.

Concerning Habeas Corpus *to Inferiour Courts and* Procedendo.

THat Writs of *Habeas Corpus*, directed to the inferiour Courts of *London, Weſtminſter, Southwark*, and other Courts within five miles of *London*, may be returnable *immediatè*. And if the Defendant intendeth to be bailed, then upon, or within four daies after allowance of the Writ, *Notice* is to be given in writing of the Names and addition of the Bail, the time when, and the Judge before whom the ſame is intended to be put in, to the Plaintiffe or his Attorney, or him that cauſed the plaint to be entred; or if none can be found, then notice of the Premiſſes to be left in writing with the chief Clerk of the

the inferiour Court, or his Deputy by the party that tenders the Baile, or his Attorney, and Oath made thereof; otherwiſe the Bail not to be taken. And a *procedendo* granted if deſired, before Bail accepted.

That if no Bail in ſuch caſes be put in within eight daies after the *Habeas Corpus* allowed, in thoſe Courts when it is returnable *immediatè*, a *Procedendo* may be granted by any Judge of this Court, if deſired before Bail taken.

And if Baile be taken in the abſence of the Plaintiffe or his Attorney, the ſame is to be taken *de bene eſſe*, and if no exception be taken within twenty daies after notice given to the Plaintiffe or his Attorney of the names of the Baile, and before whom taken, then upon Oath made of ſuch notice, the Baile to be delivered out to be filed.

That if Baile upon a *Habeas Corpus* be taken before a Judge at his chamber, and not diſaſſented unto, if not filed within four daies after the twenty daies, a *procedendo* may be granted upon certificate that it is not filed.

That

That in Term time the Plaintiffe in the inferiour Court may ſpeed the Defendant to put in, or to file his Baile by rules given in the Bill of Pleas; and if not filed according to rules, upon certificate thereof, a *procedendo* to be granted.

That all Writs of *Habeas Corpus* returnable in Court, be returnable at a day certain.

That upon Baile taken of a perſon in cuſtody, the Judges Clerk to deliver the Bail to the Prothonotary, to be filed, if aſſented unto; and to that end the Prothonotaries Fees to be depoſited, but the priſoner not to de diſcharged, untill the Baile be aſſented unto, or over-ruled in open Court.

Con-

Concerning ſpecial Baile.

THat if the Defendant appear upon the ſummons, Attachment, or diſtreſſe, or by *Superſedias quia improvidè*, or doth truly render himſelf upon the exigent, no Baile is requireable.

That in all cauſes of removall, be it by *Habeas Corpus*, Priviledge, or *Certiorari*, ſpecial Baile ought to be given.

That in cauſes where the Defendant comes in by *Capi corpus*, be it debt, detinue, treſpaſſe, for goods, Action upon the Caſe (except ſlander) if the debt or dammages amount to twenty pounds, ſpeciall Baile is to be given, except it be againſt an Heir, Executor, or Adminiſtrator.

That in Covenant becauſe the dammages are uncertain, till Declaration, Baile at diſcretion.

That in battery, conſpiracy, falſe impriſonment, no ſpeciall Baile of courſe without ſpeciall motion and order.

That in ſlander no ſpeciall Baile, except in ſlander of Title, wherein to be left to the diſcretion of the Judges.

That in priviledge, other then for Fees and diſburſements as an Attorney in this Court, Baile at diſcretion of the Court. In ſuch caſe where in a ſuit by a common perſon, eſpeciall Baile is not requiſite.

That if Baile be given upon reverſall of an Outlary, or removall by *Habeas Corpus*, the originall to be ſhewn upon tendring of the Declaration, otherwiſe the Baile not liable; unleſſe the party or his Attorney will voluntarily appear, or take a Declaration, without ſhewing of it.

That in caſe of a removall out of an inferiour Court or reverſall, the new originall to agree in the nature of the Action, the ſumme in demand, and the County, otherwiſe the Baile not liable: but if the party will voluntarily appear to ſuch varying originall, to be good as to the party: but if upon a Cauſe removed by

Habeas

Habeas Corpus, out of the Courts of *Canterbury*, *Southampton*, *Hull*, *Litchfield*, or *Poole*, which are Counties where the Judges of *Niſi prius* ſeldome come, if the Action be tranſitory, it muſt laid in the County of *Kent*, *Southampton*, *York*, *Stafford*, or *Dorſet*, where the Town and County lieth, and the recognizance to be taken accordingly.

That the principall rendring himſelfe at any time after Baile put in, and before or upon the day of apparance of the *ſcire facias* returned, *ſcire feci*, or of the ſecond *ſcire facias* returned *nihil*, or in caſe there ſhall be an Action of debt brought upon the recognizance againſt the Bail, then if the principall ſhall render himſelf, upon or before the proceſſe returned ſerved, no further proceedings to be againſt the Baile.

Concerning Apparances, and Entries thereof.

THat Apparances be duly entred with the Prothonotaries or Filizers of this Court respectively, with whom the same ought to be entred; but if special Baile be requirable in the Case, the Plaintiffe not to be concluded by such apparances, if he insist upon it.

That where an apparance is upon the original Writ, if the Defendants apparance be not entred of Record, the Defendants Attorney to give his hand to the Plaintiffs Attorney upon the delivery of the declaration, that he appeareth thereunto.

That any Attorney of either Bench accepting a Warrant to appear, or subscribing a Procefs, Declaration, or Warrant

Warrant to appeare, be compelled to cauſe apparance, or be liable to an Attachment, or put out of the Roll, as the caſe requires; and the Party not to be received to countermand ſuch apparance after his Reteyner.

That no perſon without Rule of Court, order of the Judge or Prothonotary; and notice to the adverſe partie or his Attorney, change or ſhift his Attorney; and ſuch Attorney newly comming in, to take notice at his perill of the Rules whereunto the former Attorney was liable, had he continued.

That a Reteyner of an Attorney of the Common Pleas, by an Attorney of the Upper Bench, *& è Converſo*, be a ſufficient excuſe to the Attorney ſo reteined, acting according to ſuch reteyner, and the Attorney ſo retaining without warrant from the Party, to be ſubject to the puniſhment.

That if a *Capias* be returned in Court *non eſt inventus*, againſt a Priſoner in the *Fleet*, he is compellable to appear upon a *Habeas Corpus ad reſpondendum*, as well at the ſuit of a ſtranger, as at

his ſuit whereupon he is impriſoned, and to anſwer to a Declaration acoording to the rule of the Court, or that Judgment be entred againſt him.

That he that reverſeth an Outlary have an Attorney of Record preſent, who muſt undertake an Apparance to a new originall. And ſuch Attorney ſhall be compelled to appear; and that the Defendant or his Attorney give notice to the Plaintiffe or his Attorney, of ſuch reverſall the ſame Term, or in the vacation next after it.

Concerning Imparlances.

THat foraſmuch as ſome Inconveniences doe ſometimes happen to Plaintiffes, by entring their Declaration in ſpeciall Actions. It is there-

therefore ordered, that the Plaintiffs in ſuch ſpeciall Actions ſhall have liberty to enter the Imparlances the Terme following, entring the ſame of the firſt Term with an *Incipitur*, as it hath been uſuall in *Quare Impedits*: but that all other Imparlances be duly entred before any Iſſues, or demurrers, or judgments thereupon be entred.

That if the Defendant appear the firſt Term, and give no Rules to declare, the Defendants Attorney may the ſecond Term be compelled to accept of a Declaration with Imparlance, and the Declaration may be entred as of that Term, with an Imparlance over to the next Term, or in the firſt Term with an *Incipitur*, as before, as the Caſe ſhall require.

That if the Plaintiffe declare not the ſecond Term, though the Defendant give no Rules, yet a Non-ſuit may be entred at the end of the ſecond Term upon a continuance over by him entred by *dies datas*, but not the third Term, or after.

That upon a meer reall Action, or a bare *clauſum fregit*, an Imparlance of Courſe. But in Dower after view had, if the

the day to appear be upon the firſt Return of any *Hillary* or *Trinity* Term, no Imparlance without conſent or rule of Court.

That in Ejectment or any perſonall Action, If the Apparance be the firſt Return of *Hillary* or *Trinity* Term, no Imparlance without conſent or ſpecial rule in ſuch Cauſes, other than in *London* or *Middleſex*. If the apparance be before *Craſtin' Martin'* or *menſe Paſch.* no Imparlance without conſent, or ſpecial rule. But if upon or after thoſe Returns, an Imparlance of Courſe.

In *London* or *Middleſex* if the apparance be before *Craſtin' Aſcen'*, or before the laſt Return of any other Term, no Imparlance without a ſpecial rule or conſent; but the Defendant to plead as of that Term within fourteen daies after the end of the Term upon rule given to anſwer: but if of *Craſtin' Aſcen'*, or the laſt return, then an Imparlance of courſe.

Con-

Concerning Rules to Declare and Plead.

THat no Judgment by *nihil dicit* be entred untill there be a Rule to plead, firſt given in that Prothonotaries Office, where the Cauſe is entred, and the day by ſuch Rule be paſt, and that ſuch Rules be only given in the Bills of Pleas, or other remembrances for that purpoſe, onely to be in the cuſtody of the ſecondary of the reſpective Prothonotaries, during the time limited for giving of Rules, to the intent that all perſons concerned may have recourſe to the ſaid ſecondary, and to ſee the ſame *Gratis*; and that Clerks who uſually enter for Attorneys, may give Rules for anſwer in the ſaid Remembrances in all their own Cauſes wherein there hath been Imparlances, except in Ejectments, ſo as they enter the ſame Rules in the Office without carrying any of the ſaid Re-

membrances out of any of the ſaid Offices; and that the ſecondary ſet down upon the remembrances, the day wherein ſuch Rules are given, and that no Rules to declare or anſwer be given after three daies excluſive after the end of any Term, and ſuch rule to be out at four daies incluſive of the day wherein the ſame is given.

That in all Actions except Replevin (after rules to declare are out, yet) if the Plaintiffe or his known Attorny or Clerk be to be found, a Nonſuit for want of a Declaration not to be entred, unleſſe the Plaintiffs Attorney or known Clerk be firſt called to for a Declaration.

That if the Plaintiffs Attorney or Clerk be called to for a Declaration, and delivers it not to the Defendant or his Attorny ſomtime during that Term, then the rule being out, the Defendants Attorney may enter a Nonſuit.

That if the Plaintiffs Attorney being called to for a Declaration, cannot afterwards finde the Defendants Attorney or Clerk, to ſave a Nonſuit he may deliver a Declaration into the Prothonotaries Office where the rule is given.

That

That when a Deed, Will, or Letters of Administration are to be shewn in a Declaration, the Attorny of the Plaintiff delivering a Declaration with a subscription, that the Defendant shall not be compelled to plead till the same be shewn; no Judgment by *Nihil dicit* be entred against the Defendant till the same shewn; Nor any Nonsuit upon the Plaintiffe if he shew the same before the end of the next Term.

If the Defendant be committed to prison by Processe out of this Court, or *Habeas Corpus*, the prisoner entring his apparance with the Prothonotary in case of a plaint, or in case of attachment of priviledge; or with the Filizer in case of other processe, and giving rules to declare, the Plaintiffe not declaring before the end of the next Term after the commitment, the Defendant in reference thereunto to be discharged of his Imprisonment by *Supersedias* in the end of the next Term, and liberty for the Plaintiffe to declare upon that apparance the next Term after that at the furthest.

That if a Writ be returnable 5. *Pasc.* or the last return of any Term, the De-

fendant, giving rule, and calling for a Declaration, if it be not delivered according to the former directions, four daies or more before the Essoine day of the ensuing Term, may enter a Nonsuit, though above sixteen daies after the preceding Term.

That the Plaintiff having declared and given a Rule for answer, the Defendant is to deliver his Plea in writing to the Plaintiffs Attorney, or known Clerk.

That if there be no such Attorney or Clerk to be found, or being found, refuseth to accept it, then the Plea may be left in the Office to save a Judgment.

That in any Case where a Plea or Declaration is left in the Office, no Nonsuit for want of a Declaration, or Judgment for want of a Plea be Entred.

That in Cases of popular Actions, Informations, or reall or mixt actions, except ejectment, no judgment to be entred by default, or *nil dicit*, without motion in Court.

That upon *Nul tiel* Record pleaded, and no difficulty or variance appearing, Judgment be entred after Rule, without motion by the Plaintiff.

That

That after any Imparlance of three Terms, without any calling for answer, no Judgement to bee entred without a Terms notice.

Concerning Declarations.

FOr avoiding of long and unnecessary repetitions of the Original Writ in Actions upon the Case, and personall Actions upon penall Statutes.

That Declarations in Actions of Trespasse upon any general Statute, namely, Hue and Cry, *Monopolies*, and for suits in the Admiralty, and such like, other than debt, repeat not the Original Writ but only the nature of the action, *viz.* *A. B.* was attached to answer *C. D.* in a Plea of trespasse upon the Case, or in a Plea of trespasse and contempt, against the form of the Statute.

For the avoiding of the Common Barre and new aſſignment.

THe Declaration upon an Originall, or Bill, *Quare clauſum fregit*, may mention the place certainly, and ſo prevent the uſe and neceſſity of the Common Barre and new aſſignment.

That unneceſſary length of Declarations be reformed. And in order thereunto,

That in Actions of Covenant not to repeat more of the deed than is neceſſary for the aſſignment of the breach, and not to repeat the Covenant in the concluſion.

That in Actions of Slander, long preambles beforborn, and no more inducement than what is neceſſary for the maintenance of the accord, when it requires a ſpecial Inducement or *Colloquium*.

That in Actions upon general Statutes the Declaration not to repeat the Statute, but to conclude againſt the form of the Statute in ſuch caſe made and provided: as in caſe of debt, upon the Stat. of the ſecond year of *Edward* the ſixt, For Tythes; the thirty ſecond of *Henry*

the eighth, for Maintenance. 28 *Iacobi* of Monopolie.

That Actions of Debt upon a Judgment had in the Courts of *Westminster*, to recite onely the Judgement. But if a Judgment had by or against an Executor or Administrators debt, thereupon to repeat a Declaration and Judgment.

That before the Declaration actually entred, the Plaintiffe may amend his Declaration, paying costs, or giving an Imparlance, at the Plaintiffs election, by the Order of a Judge of the Court, or Prothonotary: But after it is entred, if the amendment be but a small matter that doth not deface the Roll, yet that before issue or demurrer entred it be amendable by the Court upon costs and liberty to plead, with a new or further Imparlance.

To cause care in the examination of the Declaration.

THat if the Plaintiffs Attorney or Clerk deliver a Copie to the Defendants Attorney or Clerk, materially varying from the originall Declaration, the disadvantage thereof not to be cast upon the Defendant, but on the Plaintiff, whose Attorney is paid for it.. *Con-*

Concerning Pleading.

THe Common Barre and new assignment to be forborn, where the Declaration contains the certainty equivalent to a new assignment.

That pleadings be succinct, without unnecessary repetitions.

That in the pleading of an Outlawry the *mesne* processe be not repeated, but the exigent, and Utlary joyned to the commencing of the suit.

That in pleading a generall Statute, the Statute be not recited, As the Statute of one and twentieth of King *Iames*, of Limitations.

Con-

Concerning Demurrers.

THat according to the ſtatute of the twenty ſeventh of *Eliz.* upon Demurrers, the Cauſes be ſpecially aſſigned, and not involved with generall unapplied expreſſions of double, negative pregnant, uncertain, wanting form, and the like, but to ſhew ſpecially wherein, that the other party may (as the caſe ſhall require) either joyn in demurrer, or amend, paying coſts, or diſcontinue his Action.

That it be declared, that matters of form, as well on the part of him that demurres, as of him that joyns in all parts of the pleading, are diſcharged; unleſſe ſuch as are ſpecially aſſigned upon the Demurrer.

Concerning Tryalls, and notice of Tryalls and Inquiries.

THat notice of Tryals or Inquiries in *London* or *Middlesex* (the Defendant dwelling within forty miles of *London*) be eight daies exclusive of the day where notice is given.

That if the Defendant live above forty miles distant from *London*, notice of such Trials and Inquiries in *London* or *Middlesex* be fourteen daies exclusive of the day of notice.

That in all Issues to be tryed by *Nisi prius* in *London* or *Middlesex* upon a record of a precedent Term, the copie of the Issue be brought to the Clerk of the Treasury, for the ingrossing of the Record, four daies at the least before the day of Tryal of such Issue, and that all Causes to be tried in *London* or *Middlesex*

sex be entred into the Marshalls Book four daies before the day of triall.

That eight daies notice exclusive be given upon tryals in the Countrey, and upon Writs of enquiry of dammages in Writs of dower and waste, and all other inquiries of dammages.

That if the Plaintiffe give notice of a tryall, and he proceed not, the Plaintiffe not to take it down to tryall again without new notice to be given, as is before expressed, unlesse by consent or Rule of Court.

But in *London* or *Middlesex*, if notice be given of a tryall for one sitting, and the Plaintiffe be not provided to proceed: Then if he give notice before the sitting that he will trie it the next sitting, that to be held convenient notice.

That in case of such warning, and no proceeding, the Defendant upon motion to have his cost of his former attendance, to be taxed by the Prothonotary; unless the Plaintiffe give the Defendant warning in convenient time that he would not proceed; or shew cause to be allowed by the Court in excuse of such Costs.

That no Record of *nisi prius* be signed before the Issue be entred upon the Roll.

That if the Plaintiffe give notice for a tryall, and proceed not, the Defendant may take it by *proviso* according to law, giving notice eight or fourteen daies, as the Case requireth, as aforesaid.

That in *London* or *Middlesex*, if no warning for a Tryall, then the Defendant not to take it by *proviso*, to trie it the same Term; but afterwards he may take it by *proviso* according to Law, giving eight or fourteen daies notice as the Case requires.

That if notice be given to the Attorney of the adverse party of a tryall upon an issue joyned, it be taken to be good notice: And oath made of want of notice to the Attorney, to turn the proof of notice given to the party upon him that brought it down to tryall in that case.

That if an issue be joyned above a year past in any case, then one Terms notice to be given of the tryall.

Con-

Concerning Tryalls at Barre.

THat for the remedy of excessive charges of tryalls at the Barre, especially whilest the Jury lyeth out, it is Ordered that a Jury lying out one night after a privy verdict delivered, there be allowed for the whole dyet of each Jury man that night no more than three shillings four pence a piece, and for two Cryers to each of them no more than two shillings ordinary, besides the charge of the Jurors Lodging.

That after a Verdict delivered in Court, the Jury and Officers to be paid their charges and fees in the Inner treasury, without going to the Taverns or Victualling-houses for that cause.

Concerning ſpeciall verdicts at the Barre, or by Niſi prius.

THat in finding ſpeciall Verdicts where the Points are ſingle and not complicated, and no ſpeciall concluſion, the Councell (if required) doe ſubſcribe the Points in queſtion, and agree to amend omiſſions or miſtakes in the *meſne* Conveyance, according to the truth, to bring the point in queſtion to Judgment.

That unneceſſary finding of deeds in *hæc verba*, where the queſtion reſts not upon them, but are onely derivation of title, to be ſpared; and found ſhortly, according to the ſubſtance they bear in reference to the Deed, as Feoffment, Leaſe, Grant, &c.

Con-

Concerning new Tryalls.

THat where a Verdict findes entire damages where damages are the principal, and part not actionable, though judgment be arrested, yet by rule of Court a *venire fac' de novo* may issue as upon an ill verdict, and upon the new tryall the party may sever his damages.

Con-

Concerning Judgment.

THat in a Judgment by *non ſum informatus*, or *nihil dicit*, in *Eject' firme*, the *Capiatur* be entred upon the firſt Judgment.

That upon a cauſe removed by *Habeas Corpus* out of an Inferiour Court, having Juriſdiction of the Cauſe, if Judgment be given for the Plaintiffe, the coſts below to be conſidered and caſt into the Judgement; if for the Defendant, the charge of putting in Baile.

That the principall in any Bond or Bill obligatory doe not for the time to come give warrant to appear for, or confeſſe judgment againſt his ſurety: and that after the two & twentieth of *January* next, no Judgment be confeſſed for, or given againſt the ſurety upon any ſuch warrant given by the principall.

That

That ſixteen daies be allowed for the ſigning of Judgments after every Term, except *Eaſter* Term, upon Cauſes depending in the Term precedent.

And laſtly, it is declared by the Juſtices of this Court, that as the Court doth expect that all the Rules and Orders before mentioned be duly obſerved; ſo it is further Ordered, that all other former Orders and Rules yet in force, not hereby altered, ſuſpended, or adnulled, be likewiſe Obſerved and put in Execution according to the true intent and meaning of the ſame.

Ol. St. John. } {Matthew Hale.
Edw. Atkins. } {Hugh Windham.

FINIS.

The OATH *to be taken by every Attorney of the Court of Common Bench at Westm^r before his admittance, to be admistred openly in Court, by the chief Prothonotary.*

YOu shall doe no falshood or deceit, nor consent to any to be done within this Court: And if you shall know of any to be done, you shall give knowledge thereof to the Lord Chief Justice, or other his brethren, Justices of this

place, that it may be reformed. You ſhall delay no man for lucre or malice. You ſhall increaſe no Fees, but you ſhall be contented with the old Fees accuſtomed. You ſhall plead no forreign Pleas, nor ſue any forreign Suits unlawfully, to the hurt of any man; but ſuch as ſhall ſtand with the Order of law, and your own conſcience. You ſhall ſeale all ſuch proceſſe as you ſue out of this Court, with the ſeal thereof: and ſee the Fees paid for the ſame. You ſhall not wittingly nor willingly ſue, or procure

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So help you God.

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